

NO. 06-1214

CLERK'S OFFICE

In The
Supreme Court of the United States

LACRESHA MURRAY, ET AL,

Petitioner,

v.

RONNIE EARLE, ETC., ET AL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARIN

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QUESTION PRESENTED

During a homicide investigation, City of Austin, Texas Police Department detectives and members of the Travis County District Attorney's office obtained a confession from 11 year old LaCresha Murray in violation of her constitutional rights. It is undisputed that LaCresha's constitutional rights were violated by these state actors.

Following a finding that LaCresha's constitutional rights were in fact violated by these state actors, which would give rise to liability under 42 U.S.C. §1983, the Fifth Circuit held that the Texas common law tort doctrine of intervening cause relieved these state actors from liability, because the intervening cause of the harm to LaCresha was the independent intervening decision of the state trial court to admit the unconstitutionally obtained confession into evidence in the trial.

**CAN THE FIFTH CIRCUIT APPLY THE
TEXAS COMMON LAW DOCTRINE OF
INTERVENING CAUSE TO A TRIAL
COURT'S DECISION TO ADMIT
UNCONSTITUTIONALLY OBTAINED
EVIDENCE IN ORDER TO CIRCUMVENT
UNDISPUTED STATE ACTOR LIABILITY
UNDER 42 U.S.C. §1983?**

LIST OF PARTIES

Appellant certifies that the following persons may have an interest in the outcome of this case:

1. LaCresha Murray, Petitioner, Austin, Texas
2. Frank P. Hernandez, Esq., Petitioner's Counsel of Record, Dallas, Texas
3. Martin J. Cirkiel, Esq., Round Rock, Texas
4. Dayna Bazey, Esq., Assistant District Attorney, Travis County, Austin, Texas
5. Stephanie Emmons, Esq., Assistant District Attorney, Travis County, Austin, Texas
6. Angela McGowan, Travis County Child Protective Services, Austin, Texas
7. Hector Reveles, City of Austin, Texas Police Department, Austin, Texas
8. Ernest Pedraza, City of Austin, Texas Police Department, Austin, Texas
9. Albert Eells, City of Austin, Texas Police Department, Austin, Texas
10. Ronnie Earle, Esq., District Attorney, Travis County, Texas, Austin, Texas

11. Elaine A. Casas, Esq., Assistant District Attorney, Travis County, Texas, Austin, Texas
12. David Escamilla, Esq., County Attorney, Travis County, Texas, Austin, Texas
13. David Allen Smith, Esq., City Attorney, Austin, Texas
14. Fred Hawkins, Esq., Assistant City Attorney, Austin, Texas

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In The
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October Term 2004

LACRESHA MURRAY, ET AL.,

Petitioner,

v.

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Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARIN
**TO THE UNITED STATES SUPREME
COURT:**

LaCresha Murray, hereinafter "Petitioner" or "LaCresha" or "Murray" petitions for a *writ of certiorari* to review, reverse and/or remand the judgment of the Fifth Circuit Court Of Appeals wherein the Circuit Court reversed the District Court on the application of 42 U.S.C. § 1983 under the

"qualified immunity" standard set forth by this Court and followed by all other circuits. The Fifth Circuit held that the admission of an unconstitutional obtained confession from 11 year old LaCresha into evidence acted as an intervening cause of the constitutional violation and thereby relieved the Assistant District Attorneys and the detectives of the City of Austin Police Department from liability under 42 U.S.C. §1983 unquestionably violating LaCresha's constitutional rights under the Fifth Amendment of the United States Constitution.

OPINIONS BELOW

On April 15, 1999 the Texas Court of Appeals, Third District, At Austin filed its opinion reversing the conviction of LaCresha and holding that her federal constitutional rights had been violated. [*In re. L.M.*, 993 S.W.2d 276, (Tex.App. 1999, pet. denied.).

LaCresha filed her Original Complaint [Appendix A] on August 29, 2000. All of the Defendants filed answers. All of the Defendants filed Motions To Dismiss. LaCresha filed a motion seeking limited discovery regarding governmental immunity but, in effect, was ordered as of May 23, 2003 not to pursue discovery from any Defendant. LaCresha also filed a Rule 7 Statement and a Supplemental Rule 7 Statement, as ordered by the Court, as well as a Plaintiff's Appendix to Supplemental Rule 7 Statement.

On July 30, 2003 the District Court entered its first Order. [Appendix B].

On December 2, 2003 the District Court entered its final Order that determined all of the claims pending. The Order concluded that "the claims that remain in this case to proceed to trial are LaCresha Murray's individual capacity claims against Pedraza, Eells, Reveles, McGowan, Emmons and Blazey: (1) pursuant to 42 U.S.C. §1983 for violating her rights under the Fifth Amendment, and (2) for civil conspiracy under Texas law." [Appendix C]

On March 31, 2005 the Fifth Circuit filed its opinion reversing the Trial Court. [Appendix D, *Murray, et al vs. Earle, etc., et al*, 405 F.3d 278 (5th Cir. 2005)]. The Fifth Circuit opinion reversed the decision of the District Court, finding that although LaCresha's Fifth Amendment rights were violated, the Texas common law doctrine of intervening cause relieved the state actors of 42 U.S.C. §1983 liability.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under its review authority under 28 U.S.C § 1254(1) and §2101(c) and 42 U.S.C. §1983 and the Fifth Amendment of the U.S. Constitution.

The date of the last judgment sought to be reviewed is May 3, 2005. [Denial of Petitioner's Motion For Rehearing *En Banc* at the Fifth Circuit Court of Appeals].

Appellate jurisdiction to the Fifth Circuit was conferred by 28 U.S.C. §1291 and the Fifth Amendment of the U.S. Constitution.

Jurisdiction for Appellant's suit in the federal district court was conferred by 42 U.S.C. §1983 and the Fifth Amendments of the U.S. Constitution and 28 U.S.C. §1331 and 28 U.S.C. §1343 and pendent state action jurisdiction.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

The Fifth Amendment of the U.S. Constitution and 42 U.S.C. §1983, are the constitutional provisions and federal statutes that are the foundation of this case.

STATEMENT OF THE CASE

This is a case of first impression. It is a 42 U.S.C. §1983 and Fifth Amendment case in which two unethical assistant district attorneys and four over-zealous police detectives conspired to violate constitutional rights of an 11-year old black female, LaCresha Murray, in Austin, Texas. These state actors conspired to avoid taking LeCresha before a magistrate prior to interrogating her as a target defendant for the murder of a 2-year old infant in her grandparents' care, performing that interrogation without providing her with the protection of a parent or guardian or counsel or other adult advocate, and using the unlawfully obtained "confession" in state court trials in which the 11-year old was convicted twice and given a twenty-five year sentence of incarceration. The final conviction was reversed on appeal on a finding that the confession was obtained in violation of LaCresha's constitutional rights and the submission of this confession into evidence was reversed as error without which her conviction could not stand. Respondent Earle, as District Attorney of Travis County, Texas subsequently dismissed all of the charges against LaCresha because he could not obtain a conviction without the illegal confession.